

Sorenson Bio Science and its workers' compensation insurance carrier, Liberty Mutual Insurance Co. (referred to jointly as "Sorenson" hereafter), have filed a motion for Commission review of Administrative Law Judge Sessions' preliminary determination that C. C. is permanently and totally disabled under § 34A-2-413 of the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.). On July 7, 2005, Mr. C. filed a motion to strike Sorenson's motion for review on the grounds the Commission cannot review an ALJ's preliminary decisions.

Mr. C. cites several appellate decisions in support of his motion to strike. However, those decisions focus on either the **enforceability** of an ALJ's preliminary determination or **judicial** review of a preliminary determination. In these cases, the appellate courts have relied on statutory provisions that require "finality" as a prerequisite to judicial review. On that basis, the courts have generally held that a preliminary decision by an ALJ or the Commission cannot be enforced and is not subject to judicial review.

In contrast, the question in this case is whether the Commission can engage in administrative review of the ALJ's preliminary decision. With respect to that procedure, the Commission is unaware of any statutory requirement of finality. To the contrary, the provisions of the Labor Commission Act (Title 34A, Chapter 1, Utah Code Ann.), the Utah Workers' Compensation Act (Title 34A, Chapter 2, Utah Code Ann.), and the Utah Administrative Procedures Act (Title 63, Chapter 46b, Utah Code Ann.) allow Commission review of an ALJ's order without reference to finality. The Commission has, therefore, concluded it has authority to review preliminary determinations of ALJs.

While the Commission may review an ALJ's preliminary determination, the Commission is obligated to exercise that authority every time it is asked to do so. The Commission has generally declined to review ALJs' preliminary determinations because such review delays resolution of the case and impedes the ALJ's ability to manage the case. However, the Commission has also recognized that an ALJ's preliminary determination of permanent total disability is so significant that interlocutory review is appropriate. The Commission has therefore adopted Rule 612-1-10.C(1)(b):

A party dissatisfied with the ALJ's preliminary determination (of permanent total disability) may obtain additional agency review by either the Labor Commission or Appeals Board pursuant to Subsection 34a-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

In summary, by Commission rule and practice, Sorenson is entitled to Commission review of Judge Session's preliminary determination that Mr. C. is permanently and totally disabled. The Commission therefore denies Mr. C.'s motion to strike Sorenson's motion for review. The Commission hereby allows Mr. C. 20 days from the date of this decision to submit his response to the merits of Sorenson's motion for review. It is so ordered.

Dated this 21st day of July, 2005.

R. Lee Ellertson, Commissioner